

more than a year away.⁵⁹ Thus, the Applicants present no evidence that any spectrum other than 700 MHz or AWS *currently is* being used to provide LTE. And, the suggestion that Clearwire's WiMAX coverage somehow defeats the need for immediately LTE-ready spectrum is belied by the Applicants' statement that Clearwire is reconfiguring its network to operate over LTE, likely due to the widely-known issues with WiMAX deployments.⁶⁰ Simply put, Verizon's head start with respect to 4G LTE is commanding,⁶¹ due in large part to the LTE-ready spectrum that it holds. While other bands may be suitable for LTE in the future, by the time they are actually deployed it may be too late for smaller carriers to adequately compete and bring consumers the benefit of robust competition in the 4G LTE marketplace. Thus, Verizon's dominance in the pre-4G world will be effectively transferred to the 4G world with little prospect of other competitors ever catching up to provide competitive services to consumers. Indeed, Verizon is accelerating this problem by announcing that it will only purchase 4G-LTE capable handsets on a going-forward basis. Other carriers who relied on Verizon's volume to bring down costs or drive development will once again be stranded without access to affordable devices. This will allow Verizon to further cement its dominance in the market.

⁵⁹ The Applicants refer to deployments coming in the 2013 timeframe.

⁶⁰ This also coincides the recent news China Mobile has pushed back plans to use are TDD-LTE for several years, which will make it more difficult for the TDD-LTE ecosystem to develop for the spectrum Clearwire holds.

⁶¹ Verizon has already deployed LTE in 203 markets. *See* Bryan Bishop, "Verizon LTE network crossing 200-market threshold tomorrow," The Verge (Mar. 14, 2012), *available at* <http://www.theverge.com/2012/3/14/2871897/verizon-lte-network-crossing-200-market-threshold-tomorrow>.

VII. THE COMMISSION MUST INVESTIGATE THE EXTENT TO WHICH VERIZON IS WAREHOUSING CRITICAL SPECTRUM RESOURCES

A. Verizon's Arguments That It is an Efficient User of Spectrum Miss the Mark

The Applicants devote 10 full pages to claims that Verizon is an efficient user of spectrum, and a Verizon declarant spends a great deal of time talking about how efficiently Verizon uses the spectrum that it has built out. Verizon's efficiency discussion relies on a misleading aggregate nationwide efficiency metric, when in reality a carrier may be extremely efficient in one market and incredibly inefficient in others. That Verizon may be an efficient user overall says little to rebut claims that it is warehousing spectrum in many markets across the country. Rather than focusing on how Verizon uses the spectrum it has deployed, the Commission should focus on the spectrum that Verizon does *not* use, which is left stranded in its warehouse. Verizon's discussion conveniently ignores the fact that it *already holds* 20 MHz of unused AWS spectrum covering half the country,⁶² as well as undeployed 700 MHz A and B Block licenses accounting for another 12 to 24 MHz in many markets. Verizon paid \$2.5 billion for 25 A Block licenses and \$2.1 billion for 77 B Block licenses in Auction 73 and \$2.8 billion for AWS licenses in Auction 66 – meaning that it already has more than \$7.4 billion in unused spectrum resources. Thus, notwithstanding its claims of “efficiency,” Verizon has as much as 44 MHz of prime spectrum, and perhaps more in certain markets, that is lying fallow. While Verizon has employed complicated average metrics to make the case for its efficient use of spectrum resources,⁶³ RCA would direct the Commission to a simpler metric: 44 MHz of unused spectrum means that Verizon is failing to provide service in numerous markets over

⁶² Indeed, Verizon admits that simply deploying this fallow AWS spectrum would “effectively double the ability of cell sites to handle data traffic.” Joint Opposition 22.

⁶³ *Id.* at 24-27.

approximately *half* of the 88 MHz of average spectrum that it holds nationally. This is even without considering the 20 MHz that Verizon is attempting to acquire in these Transactions. Certainly, Verizon cannot be arguing that a zero percent usage of half of its spectrum is efficient. Viewed in this light, Verizon’s efficiency arguments ring hollow.⁶⁴

Further, Verizon’s currently-undeployed spectrum is not newly-acquired. Verizon’s AWS spectrum was acquired in 2006 and its 700 MHz spectrum was available for use as of the 2009 DTV transition. Indeed, many carriers are already providing broadband service – including 4G LTE service – over AWS spectrum, and AT&T already has deployed a 4G LTE network in selected markets using the 700 MHz B Block. To add an additional 20 MHz of nationwide spectrum on top of Verizon’s stockpile would fly in the face of the Commission’s affirmative obligation to “to prevent stockpiling or warehousing of spectrum by licensees or permittees.”⁶⁵ With little or no wireless broadband spectrum coming to the auction block in the near future, the Commission must take a stand and allow spectrum to be placed into the hands of hoarders that will not put it to beneficial public use immediately.

B. Verizon’s Conveniently Changing Spectrum Story Must Be Fully Investigated By the Commission

One of the Commission’s greatest concerns about these Transactions must be Verizon’s radically changed story regarding the extent and timing of its need for more spectrum. Indeed, this is a rare instance in which an Applicants’ own statements create an unresolved issue of

⁶⁴ Verizon selectively provides information on 18 of its markets. Verizon has not explained how it selected these markets, but the Commission must assume that these represent markets favorable to Verizon’s argument and must carefully examine data relating to all relevant markets.

⁶⁵ 47 U.S.C. § 309(i)(4)(B). The Applicants mistakenly claim that “[n]o commenter . . . explains why the assignments would conflict with existing policy.” Joint Opposition 8. However, RCA clearly cited the Commission’s policy – and statutory obligation – to “prevent stockpiling or warehousing of spectrum by licensees or permittees.” RCA Petition 19-20 (citing 47 U.S.C. § 309(i)(4)(B)).

conflicting material facts that must be investigated thoroughly by the Commission. In the underlying Applications, Verizon offered vague suggestions that the spectrum it proposes to acquire might be needed for “projected future demand”⁶⁶ sometime around 2015 – and perhaps not until 2019.⁶⁷ After the Transactions came under serious fire by multiple petitioners, Verizon has suddenly “discovered” that its *real* spectrum needs will arise in 2013 – a full *two years* sooner than they had originally stipulated to the Commission.⁶⁸ If the real date on which additional spectrum would be required was 2013, why was this information not reported to the Commission earlier? Indeed, why did Verizon publicly state prior to the proposed Transactions that it did not need additional spectrum until at least 2015?⁶⁹ Surely the newly-tendered information was available to Verizon before. However, it was only when Verizon was faced with serious challenges from RCA and others regarding its actual near term need for additional spectrum that Verizon conveniently “revised the fourth quarter 2015 forecast upward by approximately 700 percent” in the time period between filing the original applications and submitting the Joint Opposition.

Verizon’s changing story raises another material question as well. If Verizon’s network is to become so severely spectrum constrained in the near term that the Transactions are necessary, how is Verizon able to offer the Cable Companies [begin highly confidential information] [REDACTED] [end highly confidential information] services? Verizon’s convenient change in tune must raise the

⁶⁶ Verizon-SpectrumCo application, ULS File No. 0004993617 Exhibit 1, at 13 (“SpectrumCo PI Statement”).

⁶⁷ *Id.* at 14 (suggesting that its longer term spectrum needs might not arise for as long as “7 years”).

⁶⁸ *Id.* at 13. Interestingly, Verizon has not provided any real justification for this change.

⁶⁹ *Id.*

Commission's suspicions about the validity of its claims. At the very least, the Commission must thoroughly investigate the spectrum need claims and the reasons behind Verizon's drastic changes in tune in such a short period of time.

In addition, it is unclear the extent to which Verizon's dramatic last-minute revision upward of its spectrum needs is based on relevant credible traffic data. As the Commission is aware, the Twin Bells until recently offered largely unlimited data plans, which naturally led to high data consumption rates. However, approximately eight months ago, Verizon ceased to provide this unlimited option, choosing instead to cap customers at 2 GB of data use at the old unlimited-plan price point.⁷⁰ And, as of September 2011, Verizon began to throttle data speeds of its 3G users to further reduce the amount of data flowing over its network.⁷¹ To the extent that Verizon is basing its growth estimates on pre-July or pre-September 2011 numbers, such estimates would not accurately reflect the amount of data growth to be expected on its network.⁷²

In sum, the Commission must request detailed information from Verizon regarding the basis for and the source of the numbers used in its projections to meaningfully assess Verizon's changing story. At a very minimum, Verizon must be required to provide the same data forecast information for *all* of the markets in which there is overlap with SpectrumCo or Cox, rather than

⁷⁰ Rachel Metz, "Verizon Data Cap: Wireless Carrier Kills Off Unlimited Plan," Huffington Post (July 6, 2011), *available at* http://www.huffingtonpost.com/2011/07/06/verizon-data-cap-unlimited_n_891755.html.

⁷¹ Verizon "Network Optimization," *available at* http://support.verizonwireless.com/information/data_disclosure.html.

⁷² Further, Verizon does not explain whether it will, and what plans it has to, refarm its existing spectrum to 4G LTE. This is important, since a carrier can handle inefficient use by keeping legacy users on smaller slices of spectrum. This is equally true since Verizon has begun purchasing exclusively 4G LTE handsets, which should drive down usage on non-4G-LTE networks.

for its hand-picked selection of a small subset of markets.⁷³ While the Commission has posed some initial inquiries to Verizon about its spectrum usage, it must drill down to get complete details on a market-by-market, band-by-band basis for each technically distinct network Verizon is running (i.e., separate showings for EVDO versus LTE networks). Certainly, the Applicants must not be allowed to pick and choose the most favorable illustrations to present to the Commission. If Verizon is relying on market-specific forecast data – data which Verizon states it regularly collects – it must provide this data for each market at issue so that the Commission may ascertain the objective facts regarding Verizon’s alleged coming spectrum shortage.⁷⁴

VIII. SPECTRUMCO DOES LITTLE TO DEMONSTRATE THAT IT WAS EVER SERIOUS ABOUT BUILDING A WIRELESS NETWORK

The Applicants continue to avoid the very serious question of whether SpectrumCo purchased the AWS licenses with the true intent of providing beneficial service to the public, or rather purchased them as an investment for financial gain. Consequently, RCA applauds the Commission’s interrogatories that request additional information from the Applicants concerning statements that raise legitimate concerns regarding possible spectrum speculation.

The Joint Opposition incorrectly suggests that RCA’s trafficking concerns arose out of what the Applicants call “stray statements” and focus on “a single remark.”⁷⁵ To the contrary,

⁷³ Because Verizon has indicated that it regularly “applies a demand forecast model based on traffic data collected,” Joint Opposition 9, it should easily be able to supply the Commission and other petitioners with this information.

⁷⁴ Even if the above-specified data forecast information is provided, it must be taken with a tablespoon of salt. Industry analysts have noted that “all carriers have their own projections for how fast data will grow,” and these internal metrics may not withstand independent scrutiny. Phil Goldstein, “Verizon: We’ll hit LTE capacity limit in some markets by 2013 without new spectrum,” *FierceWireless* (Mar. 5, 2012), *available at* http://www.fiercewireless.com/story/verizon-hit-lte-capacity-limit-some-markets-2013-without-new-spectrum/2012-03-05?utm_medium=nl&utm_source=internal.

⁷⁵ Joint Opposition 36 n.104.

RCA offered a series of *six statements*, made over a six-year period between 2006 and 2012, that each strike a consistent theme – SpectrumCo had no intent to construct and operate a wireless network. Although many of these statements have already been put into the record,⁷⁶ they bear repeating. When viewed as a series, from 2006 until 2012, these statements leave little doubt about SpectrumCo’s speculative intentions with regard to its spectrum licenses. From the very start, in the press announcement at the close of the 2006 AWS auction, SpectrumCo openly admitted that it “did not approach this *investment* with the intent of becoming the nation’s fifth wireless voice provider.”⁷⁷ Comcast repeatedly made similar statements over many years, including in 2006,⁷⁸ 2008,⁷⁹ 2009,⁸⁰ 2010,⁸¹ and 2011.⁸² And, earlier this year a Comcast executive plainly stated that “[Comcast] never really intended to build that spectrum.”⁸³

⁷⁶ RCA Petition 16-18.

⁷⁷ David L. Cohen, “Clarifying Comcast’s Spectrum Position,” ComcastVoices blog (Jan. 17, 2012), *available at* <http://blog.comcast.com/2012/01/clarifying-comcasts-spectrum-position.html> (emphasis added).

⁷⁸ Heather Forsgren Weaver, “Leap, MetroPCS break into major markets with AWS spectrum,” RCR Wireless (Sep. 25, 2006), *available at* <http://www.rcrwireless.com/article/20060925/sub/leap-metropcs-break-into-major-markets-with-aws-spectrum/> (Comcast “[made] it clear at our annual media conference last week that the company has no intention of ‘being the fifth cellular operator,’” and that “it did not anticipate embarking on any substantive buildout of the spectrum in the near term and that it was willing to let the asset lie fallow for some years to come.”) (“*SpectrumCo Article*”).

⁷⁹ Comcast Corporation Q4 2007 Earnings Conference Call Transcript (Feb. 14, 2008) (emphasis added), *available at* <http://seekingalpha.com/article/64684-comcast-corporation-q4-2007-earnings-call-transcript> (Comcast’s plans for its AWS spectrum, that “has not changed and that we’re studying what’s the best way to utilize that, if at all.”)

⁸⁰ Statement of Michael J. Angelakis, Comcast Corporation, Goldman Sachs Communacopia Conference, 5 (Sept. 16, 2009) (Comcast “[didn’t] want to be the seventh competitor in a market that we think is mature from the voice side. And it’s a huge economic investment, which we’re uncomfortable there’s a real return for.”).

⁸¹ Statement of Michael J. Angelakis, Comcast Corporation, Barclays Capital Investor Conference, 9 (May 26, 2010) (Comcast “[didn’t] need to own the [wireless] network” and “[didn’t] actually want to operate the [wireless] network.”).

Notably, Comcast has not been shy about discussing with the media the 75 percent return it is receiving on its spectrum “investment.”⁸⁴ Furthermore, given Comcast’s statement that “[t]here was never any discussion about selling the spectrum without having the commercial agreements,”⁸⁵ the real return to Comcast and other SpectrumCo participants may actually be far greater than the purchase price suggests.

It is simply disingenuous for the Applicants to attempt to dismiss these as “stray statements” when they so clearly form a pattern outlining SpectrumCo’s intentions and goals for its AWS licenses. Nor are the Applicants’ attempts – buried in a footnote – to explain away the most recent statements in any way convincing. The suggestion that Angelakis’ statement “was meant to convey the thought process following the years of evaluation and analysis, not SpectrumCo’s intentions at the time that the AWS licenses were acquired”⁸⁶ is untenable. First, the unambiguous statement that Comcast “never really intended to build that spectrum” has a plain meaning and cannot reasonably be construed to address the current plan after years of evolution. And, the current rationalization is not consistent with Comcast’s 2006 statements that “the company has no intention of ‘being the fifth cellular operator,’” and that “it did not anticipate embarking on any substantive buildout of the spectrum in the near term and that it was

⁸² Statement of Michael J. Angelakis, Comcast Corporation, Goldman Sachs Communacopia Conference, 5 (Sep. 20, 2011) (Comcast had “no desire to own a wireless network” and had “no desire to write large checks” to construct such a network.).

⁸³ Josh Wein, “Comcast Never Planned to Build Out AWS Spectrum,” *Communications Daily*, 8 (Jan 6, 2012).

⁸⁴ Chris Nolter, “Comcast remains plugged in to wireless,” *The Deal Pipeline* (Dec. 7, 2011), *available at* <http://www.thedeal.com/content/tmt/comcast-remains-plugged-in-to-wireless.php>.

⁸⁵ *Comcast Article*.

⁸⁶ Joint Opposition 36 n.104.

willing to let the asset lie fallow for some years to come.”⁸⁷ The latest statement merely reiterates the oft-stated view that the company had no serious intentions to construct or operate a wireless network.

Additionally, the evidence purporting to “demonstrate that SpectrumCo was fully engaged in exploring ways to use the AWS spectrum”⁸⁸ is plucked out of larger statements and stripped of its context. For example, while Angelakis may have said that SpectrumCo was looking to “add mobility” to existing data, voice and video products, in that same conference he made it clear that the company’s plans to do so did not include becoming “the seventh competitor in a market that we think is mature from the voice side.”⁸⁹ Further, the statement of Glenn Britt, TWC’s CEO, cited by the Applicants is even more devoid of context than the Angelakis statement. Immediately after Britt’s response, Robert Marcus, TWC’s President, COO and CFO clarified how TWC viewed its spectrum assets:

[O]n the AWS spectrum, we have no current plans to divest of the spectrum or otherwise monetize it. And at this moment in time, *we don't have specific plans to utilize it either*. What I will say is that notwithstanding all that, we're always keeping our eye on what the market for spectrum is, and I would note the recent AT&T acquisition of the media flow spectrum from QUALCOMM, and I think the price was somewhere in the mid-\$0.80 per megahertz pop, which is a pretty healthy number and certainly, more than what we paid for the AWS spectrum. And I would concede it's not exactly comparable spectrum, but I think *it certainly bodes well for the value of what we're holding*.⁹⁰

⁸⁷ *SpectrumCo Article*. SpectrumCo’s AWS licenses were acquired in 2006, the same year that this statement was made.

⁸⁸ Joint Opposition 36 n.104.

⁸⁹ Statement of Michael J. Angelakis, Comcast Corporation, Goldman Sachs Communacopia Conference, 5 (Sept. 16, 2009).

⁹⁰ Statement of Robert Marcus, President, COO and CFO of TWC, Q4 2010 Earnings Conference Call (Jan. 27, 2011), *available at* <http://seekingalpha.com/article/249137-time->

It is quite telling that the Applicants merely offer more conflicting statements to rebut RCA's well-founded concerns regarding spectrum speculation, as opposed to offering sworn declarations or record evidence. While the simplest rebuttal would have been to provide a clarifying declaration from Angelakis or an unambiguous statement of intent from another SpectrumCo principal, none has been provided. Instead, an independent consultant is commissioned to draft a report on SpectrumCo activities about which he has no firsthand knowledge.⁹¹ Nor were any documents provided that would prove a serious effort to build the spectrum was undertaken.

Further discounting SpectrumCo's efforts is its suggestion that the AWS band was "in its infancy" and therefore difficult to deploy.⁹² This ignores the fact that a number of carriers, including T-Mobile and MetroPCS, among others, were able to rapidly deploy their AWS spectrum. Perhaps most telling, while SpectrumCo was testing its "infant" spectrum, former SpectrumCo member Cox was entering into vendor contracts, building a facilities-based wireless network and launching service to consumers.⁹³ Given the fact that its former partner was able to design and deploy a wireless network, the Commission should not permit SpectrumCo to claim that the task of doing so was insurmountable.

These material conflicting statements must be investigated by the Commission. As noted above, RCA applauds the Commission's decision to request from each SpectrumCo member specific evidence relating to internal network planning deployment and discussions.

[warner-cable-s-ceo-discusses-q4-2010-results-earnings-call-transcript?part=qanda](#) (emphasis added).

⁹¹ See Exhibit 3 to Joint Opposition.

⁹² Joint Opposition 34.

⁹³ *Id.* at 38.

Additionally, SpectrumCo must provide specific documentation regarding the nature and extent of the King of Prussia trials⁹⁴ to allow the Commission to determine how much time, effort and expense were invested, as well as the intention behind conducting these tests. SpectrumCo must also disclose how and why the \$20 million was spent “to clear or confirm the clearance” of incumbent microwave links,⁹⁵ and whether this was spent pursuant to actions initiated by SpectrumCo or in connection with third-party cost-sharing obligations imposed on SpectrumCo by rule. There simply are too many questions with respect to SpectrumCo’s intentions for the Commission to allow these serious concerns to go unaddressed.

IX. THE COMMISSION MUST STRICTLY CONDITION ANY GRANT OF THE TRANSACTIONS

Although the Joint Opposition claims that none of the conditions advocated by RCA “is specific to the transactions undergoing review,”⁹⁶ nothing could be further from the truth. The Applicants entirely miss the point that the Transactions will result in the continued consolidation of market power in the hands of Verizon, one of the Twin Bells, and exacerbate the market failures that currently exist with respect to: (1) useable available spectrum; (2) voice and data roaming; (3) interoperability and equipment availability; and (4) the market for special access and backhaul. The Applicants cannot successfully pretend that each of these input markets exists in a vacuum or that spectrum-only transactions do not raise competitive concerns.⁹⁷ Given the duopolistic state of the wireless industry the Commission would set a dangerous precedent if it

⁹⁴ *Id.* at 34.

⁹⁵ *Id.* at 33.

⁹⁶ *Id.* at 64.

⁹⁷ *AT&T/Qualcomm Order* ¶ 2 (reviewing for anti-competitive harm on even though the transaction involved “only the transfer of spectrum licenses and not the acquisition of wireless business units and customers”).

failed to remedy the competitive harms raised by the pending Transactions. In order to address the market failures that will be exacerbated by an unconditional grant of the Transactions, RCA recommends that the Commission impose the following conditions on any grant of the proposed Transactions: (1) substantial divestitures of un- or under-used LTE-ready, currently usable spectrum to existing operating carriers; (2) Verizon must offer voice and data roaming rates at least as favorable to those provided to the Cable Companies under the reseller agreements; (3) an interoperability requirement for Verizon handsets operating in the 700 MHz and AWS bands; and (4) conditions to ensure that the market for special access is not further constrained.⁹⁸

Spectrum has become a competitive weapon that Twin Bells can wield, and are wielding, to hamstringing their smaller rivals. By amassing anti-competitive amounts of spectrum, in part through the Transactions, Verizon is able to limit access by competitors to critical inputs, thereby limiting their ability to compete and threatening their very existence. This harm is evidenced and enhanced by the plain fact that Verizon is not using the vast amounts of spectrum that it already has in its spectrum warehouse. To mitigate this harm, the Commission must require that significant divestitures of currently usable spectrum are made to currently operating, competitive facilities-based wireless providers. Allowing Verizon simply to divest spectrum to its fellow duopolist AT&T, or to divest it to a non-operator that may take many years to put the spectrum to beneficial use, will not mitigate the anti-competitive harms caused by these Transactions. Indeed, the public interest favors the divestiture of spectrum to competitive, operating carriers who will put this spectrum to use *now* – not in 2015 or later. Further, the spectrum must be spectrum that is currently useable for 4G-LTE.

⁹⁸ See RCA Petition 53-58.

RCA’s members also remain unable to obtain “commercially reasonable” data roaming rates from Verizon, despite the existence of the *Data Roaming Order*. And, notwithstanding Verizon’s flippant suggestion that carriers who are denied reasonable roaming should “file a complaint,”⁹⁹ the Commission has specifically found that the adoption of roaming rules “does not . . . obviate the need to consider whether there is any potential roaming-related harm that might arise” from a transaction.¹⁰⁰ This is because the voice and data roaming rules “do not enable a smaller or regional provider to replace the competitive position of a nationwide facilities-based provider,”¹⁰¹ and “do not serve as a substitute for competition in the provision of these important services.”¹⁰² Moreover, Verizon has appealed the *Data Roaming Order*, which has injected substantial uncertainty into the data roaming complaint process.

Verizon – one of the Twin Bells who made it “nearly impossible”¹⁰³ for SpectrumCo to obtain roaming – now seeks to cement its dominance in the roaming market with the Transactions. Indeed, SpectrumCo members have admitted that “roaming availability and pricing . . . [were] one of the major obstacles to an effective entry into the wireless market.”¹⁰⁴ These potential entrants “attempted to negotiate roaming agreements” – likely with the Twin Bells – “but [were] unable to obtain commercially reasonable terms.”¹⁰⁵ As RCA argued, it is “counterintuitive to allow the Cable Companies to benefit from a low reseller rate, despite their

⁹⁹ Joint Opposition 66.

¹⁰⁰ *AT&T/Qualcomm Order* ¶ 57.

¹⁰¹ *Id.* at ¶ 67.

¹⁰² *Id.* at ¶ 104.

¹⁰³ *Comcast Article*.

¹⁰⁴ Letter dated Mar. 22, 2012 from Robert G. Kidwell, counsel to BHN, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-4, at 3 (“*BHN Letter*”).

¹⁰⁵ *Id.*

failure to develop the spectrum they purchased, their significant financial gain from the Transactions, and their own admitted inability to obtain reasonable roaming rates, while at the same time allowing Verizon to deny reasonable roaming rates to competitors.”¹⁰⁶ Furthermore, members of SpectrumCo have expressly admitted that the Joint Agreements, including the Reseller Agreements, are part of “an integrated transaction,”¹⁰⁷ stating that they would “not have entered into the Spectrum License Purchase Agreement had the other parties not come to terms on the commercial agreements.”¹⁰⁸ [begin highly confidential information] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [end highly confidential information] This proves without a doubt that the spectrum acquisition is fully intertwined with the Joint Agreements, and the two must be reviewed simultaneously as part of a single transaction. Any suggestion that the transfer of licenses is not directly related to the other commercial agreements is without merit.

Accordingly, any conditions relating to voice or data roaming arising from the Joint Agreements clearly are transaction-specific. [begin highly confidential information] [REDACTED]

[REDACTED]

¹⁰⁶ RCA Petition 56.

¹⁰⁷ Comcast Article.

¹⁰⁸ BHN Letter 15.

[REDACTED]

[REDACTED] [end highly confidential information]

Indeed, as RCA suggested in its Petition, these rates provide the Commission with a prime example of “commercially reasonable” rates, negotiated between sophisticated parties at arms-length. [begin highly confidential information] [REDACTED]

[REDACTED]

[REDACTED] [end

highly confidential information] And, no distinction should be made between reseller traffic and roaming traffic, as both place an identical strain on the network. If anything, roaming rates should be lower given that roaming customers of another carrier spend less time on the host carriers’ network (thereby reducing network strain), do not require sales, marketing and customer service support, and home carriers in roaming agreements are also provided with the benefit of being able to roam on their partners’ networks, which has value.

Consequently, at an *absolute minimum*, Verizon must offer the following reseller rates, offered to the Cable Companies,¹⁰⁹ as roaming rates to any facilities-based provider:

Service	Rate
[begin highly confidential information]	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[end highly confidential information]	

¹⁰⁹ [begin highly confidential information] [REDACTED]
[REDACTED] [end highly confidential information] The Commission obviously should view these as commercially reasonable roaming rates under any standard.

These rates represent the opportunity for the Commission to gauge what “commercially reasonable” rates look like in the context of roaming negotiations. If Verizon is able to offer such rates to the Cable Companies, it should not be heard to argue about capacity constraints, or concerns that such carriers are unwilling to construct facilities in such areas – arguments Verizon has made in the past as to its refusal to provide roaming. Indeed, if Verizon is able to allow carriers to resell service over its network at these rates, based on a commercially reasonable, arms-length agreement, it should be commercially reasonable to provide such rates to facilities based carriers. As a result, given that the Transactions eliminate four potential roaming partners and cement Verizon’s dominance in the spectrum market, roaming rates equal to or better than the reseller rates offered by Verizon to the Cable Companies must be offered to any interested facilities-based carrier as a way to mitigate the anti-competitive harm that the Transactions will cause in the market for voice and data roaming inputs. Otherwise, the Commission would be allowing carriers who have warehoused spectrum for years to potentially provide nationwide service, while leaving facilities based carriers – who have been constructing facilities and providing beneficial service – to continue to be disadvantaged and unable to provide nationwide voice and data services, to the detriment of consumers and the public interest. The Commission should not reward the Cable Companies in such a manner, by placing its stamp of approval on these Transactions – and by association on warehousing and spectrum speculation.

The Commission must ensure that competitive carriers are not denied interoperable access to the most innovative new devices and concomitant economies of scale. Any grant of the Transactions must include a condition requiring the interoperability of handsets across the bands in which they operate, in particular the AWS and 700 MHz bands. Similarly, the Commission must also make certain that competitive wireless carriers are able to obtain affordable special

access and backhaul. Due to the new Verizon-Cable Companies partnership, former wireline adversaries have essentially agreed not to compete. As a result, competitive wireless carriers may face new, and even greater, obstacles to obtaining affordable backhaul and special access. The Commission must adopt measures to ensure that the special access and backhaul market does not further devolve into an anti-competitive chokepoint.

X. CONCLUSION

The foregoing premises having been duly considered, RCA respectfully requests that the Commission condition the Transactions in accordance with its Petition, or otherwise deny them.

Respectfully submitted,

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March 26, 2012

CERTIFICATE OF SERVICE

I, Andrew Morentz, hereby certify that on the 26th day of March, 2012, I caused a true and correct copy of the foregoing Reply to Opposition to Petition to Condition or Otherwise Deny Transactions to be sent by electronic mail to:

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